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# Immigration Legislation and Issues in the 106th Congress

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# CONTENTS

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## SUMMARY

The top immigration issue before the 106th Congress is the admission of temporary foreign professional workers, commonly referred to as H-1B nonimmigrants. Despite enactment of legislation in 1998 to increase the number of H-1B nonimmigrants, pressure is mounting in the 106th Congress to raise the admissions ceiling further. The 1998 law increased the admissions ceiling for the H-1B visa category from 65,000 to 115,000 for both FY1999 and FY2000. FY2000 admissions hit 115,000 by mid-March, however, and many in the business community, notably in the information technology area, are urging that the ceiling be raised again.

A number of House and Senate bills to increase the H-1B admissions ceiling are pending. The Senate Judiciary Committee has marked up S. 2045, the "American Competitiveness in the Twenty-first Century Act of 2000," which would add an additional 297,500 H-1B visas over FY2000-FY2002. S. 2045 also would ease the per-country ceilings for permanent employment-based admissions and would expand the availability of math, science, and technology scholarships. The House Judiciary Committee's Immigration and Claims Subcommittee has reported H.R. 4227, the "Technology Worker Temporary Relief Act." H.R. 4227 would eliminate the numerical limit on H-1B visas for FY2000 and would allow for temporary increases in FY2001 and FY2002 if certain conditions are met. It also would revise the requirements that H-1B employers must meet. Another pending H-1B bill, H.R. 3983, would add an additional 362,500 H-1B visas over FY2001-FY2003.

The future structure of the Immigration and Naturalization Service (INS) is another issue under consideration. The Clinton Administration is moving forward to restructure INS internally by separating the agency's enforcement and service functions. Congress, however, may restructure INS legislatively. At issue for Congress is whether separating the agency's enforcement and service functions will lead to more effective administration of immigration law; and, if so, how this should best be done. The House Judiciary Immigration Subcommittee has approved H.R. 3918, the "Immigration Reorganization and Improvement Act of 1999," which would establish a bureau of immigration services and a bureau of immigration enforcement within the Department of Justice.

Legislation pertaining to H-2A temporary alien agricultural workers is also before the 106th Congress. A provision intended to expedite the Labor Department's processing of H-2A labor certification applications has been enacted (P.L. 106-78). S. 1814 and H.R. 4056, controversial bills to establish an amnesty program for unauthorized seasonal workers and modify the operation of the H-2A program, are pending. Congress continues to deal with bills prompted by the sweeping changes in the immigration and welfare acts passed in 1996. P.L. 106-69 includes a repeal of Section 656(b) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), pertaining to Social Security numbers on drivers' licenses, that raised concerns about a national ID card. Additionally, legislation enacted in the first session appears to have at least temporarily resolved most refugee issues (P.L. 106-104, P.L. 106-113).



## MOST RECENT DEVELOPMENTS

*Major legislation is pending in the House and Senate to raise the admissions ceiling for temporary professional (H-1B) workers. On April 11, 2000, the Senate Judiciary Committee reported a bill (S. 2045) to add an additional 297,500 H-1B visas over FY2000-FY2002. On May 9, 2000, the House Judiciary Committee is scheduled to begin marking up an H-1B bill (H.R. 4227), which has been favorably reported by its Immigration Subcommittee.*

## BACKGROUND AND ANALYSIS

# Introduction

Immigration to the United States is regulated by federal law. The basic U.S. law, the Immigration and Nationality Act (INA), was enacted in 1952 and has been substantially amended since then. A major overhaul of the INA occurred in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA; Division C of P.L. 104-208). The Immigration and Naturalization Service (INS) administers and enforces the INA. (For a basic introduction to immigration, see CRS Report 98-918, *Immigration Fundamentals*, and CRS Report 94-146, *Immigration: Numerical Limits on Permanent Admissions, FY1998-FY2000*.)

# Pending Legislation and Issues

The major legislative issue before the 106th Congress is the admission of temporary professional (H-1B) workers. Other pending issues include INS restructuring, the seasonal agricultural worker program, and entry/exit controls. In addition, Congress continues to deal with various issues arising from the sweeping changes in IIRIRA and the 1996 welfare act.

## H-1B Temporary Professional Workers

Temporary workers are admitted to the United States under the "H" nonimmigrant category, a part of the INA (§ 101(a)(15)(H)). H-1B nonimmigrants – professionals who work in specialty occupations – make up the largest category of temporary alien workers. The 105th Congress enacted the American Competitiveness and Workforce Improvement Act (Title IV of P.L. 105-277) in 1998 to increase the number of H-1B nonimmigrants and reform perceived abuses of the visa. This law increased the admissions ceiling for the H-1B visa category from 65,000 to 115,000 in both FY1999 and FY2000, and to 107,500 in FY2001. It reverts back to 65,000 in FY2002. By mid-1999, FY1999 admissions had reached 115,000, and this year's ceiling was reached in March. Many in the business community, notably in the information technology area, are urging that the ceiling be raised again.

On April 11, 2000, the Senate Judiciary Committee reported **S. 2045**, the "American Competitiveness in the Twenty-first Century Act of 2000," introduced by Chairman Orrin Hatch. S. 2045 would add an additional 297,500 H-1B visas over FY2000-FY2002. It also

would ease the per-country ceilings for permanent employment-based admissions and would expand the availability of math, science, and technology scholarships. In the House, the Judiciary Committee's Immigration and Claims Subcommittee has reported the "Technology Worker Temporary Relief Act" (**H.R. 4227**), introduced by Chairman Lamar Smith. It would eliminate the numerical limit on H-1B visas for FY2000 and would allow for temporary increases (i.e., enabling employers to hire H-1Bs outside of the numerical ceilings) in FY2001 and FY2002 if certain conditions are met. It also would revise the requirements on employers, notably adding a $40,000 minimum salary and new reporting requirements. In addition, H.R. 4227 contains anti-fraud provisions (including the requirement that H-1B workers be employed full time), which would be funded by a $100 fee above the current $500 fee per visa. Representatives David Dreier and Zoe Lofgren have introduced **H.R. 3983**, which would add an additional 362,500 H-1B visas over FY2001-FY2003 and raise the visa fee to $1,000 to fund scholarships and training. Like S. 2045, H.R. 3983 would ease the per-country ceilings for permanent employment-based admissions. With respect to H-1B fees, House Education and the Workforce Committee Chairman William Goodling has introduced **H.R. 4402**, which focuses on the use of H-1B fees for education and training.

Although the above bills are receiving the most attention now, other bills pertaining to the H-1B issue have been introduced. Representative Sheila Jackson-Lee, the ranking member of the House Immigration Subcommittee, has introduced **H.R. 4200**, which would set the ceiling at 225,000 annually for FY2001-FY2003, with the condition that it would fall back to 115,000 if the unemployment rate exceeds 5% and to 65,000 if the unemployment rate exceeds 6%. H.R. 4200 also would modify the attestation requirements of employers seeking to hire H-1B workers, would add a sliding fee scale based upon the size of the firm seeking H-1B workers, and would revise the uses of the fees collected for education and training programs. **S. 1440/H.R. 2698** would raise the H-1B admissions ceiling to 200,000 annually for FY2000-FY2002, and would exclude from the ceiling all H-1B nonimmigrants who have at least a master's degree and earn at least $60,000, or who have at least a bachelor's degree and are employed by an institution of higher education. **H.R. 2687** and **S. 1645** would both create a new nonimmigrant visa category, referred to as "T" visas, for foreign students who have graduated from U.S. institutions with bachelor's degrees in mathematics, science, or engineering and who are obtaining jobs earning at least $60,000. More stringent than H.R. 2687, S.1645 contains provisions aimed at protecting U.S. workers that are comparable to the provisions governing the H-1B visa. S. 1645 also would require prospective employers to pay a $500 fee for each "T" they hire, with the fees going into a "High-Tech Education Fund" administered by the Department of Commerce.

Proponents argue that increases in the admission of H-1B workers are essential if the United States is to remain globally competitive and that employers should be free to hire the best people for the jobs. Those opposing further increases assert that there is no compelling evidence of a labor shortage in these professional areas that cannot be met by newly graduating students and the existing U.S. workforce. They maintain that the education and training of current U.S. workers should be prioritized. (See CRS Report RL30498, *Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers*.)

## INS Reorganization and Budget

**INS Restructuring Proposals.** INS is the primary agency charged with enforcing U.S. immigration law. Regulating immigration can be viewed as having two basic components: stemming illegal immigration (enforcement) and facilitating legal immigration (service). Many in Congress and in the Administration maintain that INS's enforcement and service functions need to be separated in order to better administer immigration law. Since 1998, INS headquarters has been developing a plan to restructure the agency at headquarters and in the field by separating these functions. At issue for Congress is whether separating INS's enforcement and service functions will lead to more effective administration of immigration law. Although there are budget reprogramming requirements that place constraints on how the agency uses its funding, there is no statutory requirement that the Administration gain formal congressional approval of INS's restructuring plan. Congress, however, may choose to mandate legislatively that INS be dismantled or structured differently.

On March 22, 2000, the House Judiciary Immigration Subcommittee approved a bill to dismantle INS and replace it with two bureaus, one for immigration services and one for enforcement, within the Department of Justice **(H.R. 3918)**. This bill was introduced by Representative Harold Rogers, who chairs the Appropriations subcommittee that funds INS. At the March 22 markup, the subcommittee considered an amendment in the nature of a substitute offered by Representative Howard Berman for Representative Jackson-Lee, but it was defeated along party lines (3-4). The amendment would have restructured INS internally and renamed it the National Immigration Bureau. It was similar to **H.R. 2680**, a bill introduced by Representative Jackson-Lee.

H.R. 3918 is nearly identical to **H.R. 2528**, as introduced by Representative Rogers last year. Both bills are known as the "Immigration Reorganization and Improvement Act of 1999." Subcommittee Chairman Smith asserted during the March 22 markup that the reintroduction of H.R. 2528 as H.R. 3918 was necessary because the Administration had negotiated in "bad faith." The amended version of H.R. 2528, according to Representatives Rogers and Smith, represented a compromise negotiated with Attorney General Janet Reno. Late in the session last year, the Administration pulled its support of H.R. 2528 as amended, stalling full committee markup. As approved by the Immigration Subcommittee, H.R. 2528 would have established an Office of the Associate Attorney General for Immigration Affairs to "oversee and supervise" the directors of the new bureaus for immigration services and enforcement, as well as the Director of the Executive Office for Immigration Review. While the statutory responsibility for carrying out immigration service and enforcement functions would have been transferred from the INS Commissioner to the bureau directors, the Associate Attorney General would have coordinated the administration of national immigration policy, the allocation of resources, and the maintenance of shared support functions. H.R. 3918 would not establish such an Immigration Affairs office.

On September 23, 1999, the Senate Judiciary Immigration Subcommittee held a hearing on a restructuring proposal (**S. 1563**), which was introduced by Chairman Spencer Abraham. This bill would reconstitute and elevate INS as an Immigration Affairs agency in the Department of Justice. Like H.R. 3918, S. 1563 would create separate bureaus for immigration services and enforcement. Unlike H.R. 3918, however, it would establish an Office of the Associate Attorney General for Immigration Affairs, which would statutorily assume all of the Attorney General's immigration responsibilities. In addition, the Associate

Attorney General would be responsible for allocating resources to both bureaus, coordinating shared resources, and formulating policy and planning. Unlike H.R. 3918 or the Administration's plan, S. 1563 would house the inspections program in the Associate Attorney General's office because of its dual service and enforcement functions. The bill also would set time limits on processing certain visa petitions and applications, strengthen existing statutory prohibitions on the use of fees collected for processing immigration and naturalization applications, and increase the Border Patrol by 1,000 agents annually through FY2004. (See CRS Report RS20279, *Immigration and Naturalization Service Reorganization and Related Legislative Proposals*, and CRS Report RL30257, *Proposals to Restructure the Immigration and Naturalization Service*.)

**INS Budget.** In recent years, INS has experienced a large growth in its budget and staff, growing from $1.5 billion and 18,000 funded positions in FY1993 to $4.3 billion and nearly 32,000 funded positions in FY2000. For FY2001, the Administration has requested $5.0 billion in total funding for INS. This amount includes $3.3 billion in direct funding and $1.7 billion in offsetting receipts and other reimbursable funding.

## H-2A Temporary Agricultural Workers

In recent years, there have been legislative efforts to modify or supplement the H-2A temporary agricultural program authorized by the INA. The H-2A program is small but growing, with approximately 42,000 workers approved in FY1999. Agricultural employers have long complained that the H-2/H-2A program is overly cumbersome, while farm labor advocates have argued that it provides too few protections for U.S. workers. In part, the debate reflects the inherent conflict in the program goals of expeditiously providing employers with foreign workers, while protecting U.S. workers. Legislation has been enacted to expedite the processing of H-2A applications, and broader legislation is pending.

Senator Gordon Smith has introduced **S. 1814**, the "Agricultural Job Opportunity Benefits and Security Act of 1999." It evolved from legislation passed by the Senate in the last Congress, with the notable addition of an amnesty program. Another Senate bill (**S. 1815**) includes only the amnesty title of S. 1814. On May 4, 2000, the Senate Judiciary Immigration Subcommittee held a hearing on S. 1814. A bill nearly identical to S. 1814 (**H.R. 4056**) has been introduced in the House. S. 1814 and H.R. 4056 consist of three interrelated parts, as described briefly below:

- Title I would establish a time-limited amnesty program for aliens who have worked here illegally in seasonal agriculture, and who continue to do so for a specified time.
- Title II would require the Department of Labor (DOL) to maintain a system of agricultural worker registries that would list U.S. citizen and lawful permanent resident alien workers, as well as workers participating in the amnesty program. Agricultural employers seeking H-2A workers would be required to apply for workers from this registry before their H-2A applications could be considered.
- Title III would streamline the current H-2A program by, among other things, redefining the domestic recruitment requirement to mean application to the agricultural worker registry, and allowing employers to offer a housing allowance in lieu of the guaranteed housing currently required.

These proposals have been the subject of considerable controversy, with House Immigration Subcommittee Chairman Lamar Smith characterizing the amnesty program as "indentured servitude." In support of his bill, Senator Smith said: "We should not have illegal workers. We should have a legal system." (See CRS Report 97-714, *Immigration: The H-2A Temporary Agricultural Worker Program*; CRS Report 95-712, *Immigration: the Labor Market Effects of Temporary Alien Farm Worker Programs*; and CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*.)

## Entry/Exit Controls (Section 110)

Section 110 of IIRIRA requires the Attorney General to develop an automated entry/exit control system to create a record for every alien arriving in the United States and to match it with the record for that alien departing the United States. The goal of Section 110 is enhanced immigration enforcement and border security through better record-keeping of non-citizen arrival/departure data. Implementing Section 110, however, is likely to prove more difficult at land border and sea ports than at airports, because the inspections process at land border and sea ports currently includes no procedure or system upon which to build an automated entry/exit control system. Supporters of Section 110 and its implementation at all ports of entry assert that such a system is essential to ensure the integrity of all nonimmigrant admissions and to maintain control of U.S. borders. Opponents of Section 110 predict it will cause congestion at border crossings, stymieing trade, tourism, and other legitimate cross-border traffic.

In the FY1999 Omnibus appropriations act (P.L. 105-277), Congress included a provision that amended Section 110 to extend the original September 30, 1998 deadline to March 31, 2001, for land border and sea ports of entry, but left the FY1998 deadline in place for air ports of entry. The amendment also included a clause requiring that the system "not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border ports of entry." (See CRS Report 98-89, *Immigration: Visa Entry/Exit Control System*.)

In the 106th Congress, there have been renewed attempts to either amend or repeal Section 110. For example, the Senate-passed FY2000 Commerce, Justice, State (CJS) appropriations bill (**S. 1217**) included a provision to repeal Section 110. The Senate also approved an amendment to **S. 886**, the State Department authorization bill, that would: (1) extend for 2 years the deadline to implement Section 110 at airports; (2) require a feasibility study of implementing Section 110 at land border and sea ports; and (3) exempt land border and sea ports from current Section 110 requirements. Similar provisions to the Section 110 amendment to S. 886 were included in **H.R. 1250** and **H.R. 1650/S. 745**. The final FY2000 CJS appropriations act (**H.R. 3421**) and State Department authorization act (**H.R. 3427**), which were included in the FY2000 Consolidated Appropriations Act (**P.L. 106-113**), did not include provisions to either amend or repeal Section 110.

## Alien Eligibility for Public Assistance

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; P.L. 104-193), also referred to as the 1996 welfare act, significantly restricted the eligibility of legal aliens for needs-based public assistance. Previous law had not generally distinguished legal permanent residents from citizens. As the result of perceived abuses and

budgetary concerns, P.L. 104-193 barred most legal aliens from Supplemental Security Income (SSI) for the Aged, Blind, or Disabled and from food stamps. It also allowed the states to limit alien access to Medicaid and Temporary Assistance for Needy Families (TANF). Additionally, legal aliens arriving after August 22, 1996, the enactment date of PRWORA, are barred from these and other federal means-tested programs for 5 years after arrival. These changes proved controversial, particularly the termination of benefits for aliens who were already receiving them when the 1996 act became law. The 105th Congress passed several laws continuing or partially restoring SSI, Medicaid, and food stamps to some previous beneficiaries and extending refugee eligibility for 2 years. (See CRS Report 96-617, *Alien Eligibility for Public Assistance*.)

In the 106th Congress, the House has passed an anti-trafficking bill (**H.R. 3244**), under which certain alien trafficking victims would be treated similarly to refugees in terms of eligibility for federal assistance. In addition, **H.R. 1788**, which denies federal public benefits to individuals who participated in Nazi persecution, has been reported by the House Judiciary and Government Reform committees. The Senate companion bill is **S. 1249**.

The President's FY2001 budget request includes funding to expand public assistance benefits for legal immigrants. Similar proposals were in the FY2000 request, but no action was taken on them. The Administration would restore SSI and related Medicaid for immigrants who have been here 5 years and subsequently become disabled. It also proposes allowing states to provide health coverage for children and pregnant women through Medicaid and the State Child Health Insurance program (referred to as both SCHIP and CHIP), as well as restoring food stamp eligibility for immigrants here before August 22, 1996, who subsequently reach 65. While the Administration has not submitted legislative language to implement its proposals, two bills include some of the same proposals and have Administration support. **S. 1227**, the "Immigrant Children's Health Improvement Act of 1999," has bipartisan cosponsorship and was endorsed by the President. The bill would give the states, quoting from the late Senator John Chafee's introductory floor statement, "the option to lift the five-year bar for pregnant women and children [arriving after August 22, 1996], allowing this narrow group of legal immigrants to receive health care services under either SCHIP or Medicaid" (*Congressional Record*, June 16, 1999, p. S7133). A more comprehensive bill, the "Fairness for Legal Immigrants Act of 1999" (**S. 792**), was introduced by Senator Tom Daschle for Senator Daniel P. Moynihan. It would give states the option of allowing legal immigrant pregnant women, children, and blind or disabled medically needy individuals to be eligible for medical assistance under the Medicaid program or, in the case of children, SCHIP, regardless of their date of entry. For pre-August 1996 legal immigrants, it would restore SSI eligibility for those who are elderly and poor; and for post-August 1996 legal immigrants, it would restore SSI eligibility for those who become disabled after entering the country. It also would restore food stamp eligibility for all pre-August 1996 legal immigrants. **H.R. 1399** is the House companion bill.

Other bills pertaining to alien eligibility for public assistance include **S. 1805**, which would restore all food stamp benefits available to legal immigrants before the 1996 welfare act; **H.R. 3192** is the House companion bill. **S. 1709** would provide federal reimbursement for indirect costs relating to the incarceration of illegal aliens and for emergency health services furnished to undocumented aliens. **H.R. 2205** would provide additional funding to states for emergency health services furnished to undocumented aliens. **H.R. 2849** would reimburse states for the costs of educating certain illegal alien students.

## Criminal Aliens

Two 1996 laws, the Antiterrorism and Effective Death Penalty Act (AEDPA; P.L. 104-132) and IIRIRA, significantly affected how criminal aliens — aliens who have engaged in criminal activity — are treated in the removal process. Among other changes, these laws:

- mandate more widespread confined detention of criminal aliens after criminal imprisonment ends, even in cases where criminal confinement ended years before;
- make it much harder for criminal aliens with longstanding ties in the United States to remain here, even in some cases where solid family and community ties may appear to outweigh the seriousness of past criminal conduct; and
- curtail judicial review of removal orders based on criminal convictions.

These changes have been controversial, as a growing number of press accounts relate how individual long-term aliens have been placed in confinement and threatened with removal even though their criminal activity either may not generally be regarded as particularly serious or occurred in the distant past. Mandatory detention and curtailment of judicial review also have been critically received in the courts, which frequently (though not always) have narrowed or halted their application. Between the perception of some Members that the 1996 changes have been unduly harsh in certain instances and the desire of other Members to regain congressional control over detention and review policy from the courts, revisions of the 1996 criminal alien rules may be forthcoming. Meanwhile, INS has ceased to apply the letter of the 1996 mandatory detention requirements in some classes of cases and reportedly is considering modifying its implementation of the mandatory removal provisions.

To effect the 1996 changes, Congress amended the INA in three significant ways: (1) it covered much more criminal conduct under the category of *aggravated felony*, a new class of criminal aliens established in the INA in the 1980s that now covers crimes of violence or theft punished by a year's imprisonment (including suspended sentences), as well as drug crimes; (2) it dramatically lowered the seriousness of criminal conduct that requires an alien to be detained between release from criminal confinement and subsequent deportation to include almost all potentially deportable criminal aliens and not just aliens who have been convicted of an *aggravated felony*; and (3) it lowered the seriousness of criminal conduct that bars immigration judges from granting discretionary relief from removal, while also making it more difficult for criminal aliens who are not now disqualified based on seriousness of offense from meeting other eligibility criteria.

The complexity of, and controversy about, the 1996 changes are compounded by their "retroactive" application. That is, for example, the current definition of aggravated felony applies to past convictions that were not aggravated felonies at the time of conviction, and aliens who previously never were detained for past criminal conduct now must be detained — at least under the letter of current law. (See CRS Report 97-415, *Criminal Aliens: Expanded Detention, Restricted Relief from Removal*.)

Perhaps the most sympathetically viewed of those affected by the 1996 changes are long-term immigrants whose misconduct and release from incarceration, if any, occurred well before they seek relief from detention and removal. Thus, Representative Bill McCollum has introduced legislation to allow certain long-term permanent residents to apply for

discretionary relief from removal despite the 1996 amendments to the definition of the term *aggravated felony*. Under the "Fairness for Permanent Residents Act of 1999" (**H.R. 2999**), legal permanent residents with criminal records could apply for discretionary relief for which they otherwise would be eligible but for changes in the *aggravated felony* definition enacted in 1996, with a limited exception. Additionally, H.R. 2999 would change statutory requirements for mandatory detention.

The "Keeping Families Together Act" (**H.R. 3272**) is somewhat broader in its coverage. It would do the following: adopt former INA standards to make it easier for certain criminal aliens to have their community and family ties taken into account before they are deported; ease certain mandatory detention requirements for criminal aliens who completed their criminal sentences years ago or whose countries will not accept them back; and reinstate the broader judicial review standards of earlier law. **H.R. 1485** also would allow certain criminal aliens to apply for relief from removal even though they would be disqualified from doing so under the 1996 changes. It would not fully restore the pre-1996 standards for relief, but rather would impose standards that lie somewhere in between the pre- and post-1996 rules. (See CRS Report RS20222, *Family Reunification Act of 1999 (H.R. 1485)*.)

In the Senate, **S. 173** addresses relief, detention, and judicial review aspects of the 1996 changes. Immigrants would only be disqualified from seeking relief because of an aggravated felony conviction if the crime was punishable by imprisonment of at least 5 years. The 1996 mandatory detention provisions would be eased significantly for aliens who originally were admitted lawfully and for aliens whose countries of origin will not accept their return. Judicial review of removals based on criminal activity would be restored. In many ways, the "Fairness to Immigrant Veterans Act of 1999" (**H.R. 2287**/**S. 871**) would go furthest in easing detention, relief, and review restrictions, but would do so only for certain honorably discharged veterans and active service personnel.

An international crime bill (**S. 1754**) passed the Senate on November 4, 1999. Title III, "Anti-atrocity Alien Deportation," would amend the INA to provide for the inadmissibility and removability of aliens who have committed acts of torture abroad and to establish an Office of Special Investigations within the Department of Justice's Criminal Division.

**INS Operations.** In recent years, INS has come under intense criticism for not expeditiously deporting criminal aliens. According to the Attorney General, over 35,318 criminal aliens were released by INS over a 5-year period ending in May 1999. Of that number, 11,605 went on to commit additional serious crimes, including 98 homicides, 142 sexual assaults, 44 kidnappings, 346 robberies, and 1,214 assaults. INS reports that some of these individuals had won removal cases, were allowed to post bond by immigration judges, or were released because INS deemed them as not posing a threat to society. On the other hand, some of these individuals may have been subject to mandatory detention and removal because of their criminal records. This matter is still under review by the Department of Justice and by the House Immigration Subcommittee, which subpoenaed INS criminal alien records following the arrest and apprehension of Angel Maturino Resendez, a Mexican national charged with multiple counts of first-degree murder in the United States.

In FY1999, INS removed 62,359 criminals — a 12% increase over FY1998. In addition, INS removed 114,631 non-criminals; the bulk of non-criminal removals (89,035),

however, consisted of administrative removals for fraudulent documents through the expedited removal program at ports of entry.

Despite increased funding during FY1999, INS officials reported that the agency did not possess the detention capacity to fully comply with the mandatory detention requirements included in IIRIRA. They estimated that to do so would require a detention capacity of between 19,000 and 34,000 beds. For FY1999, to meet detention mandates and other challenges, Congress provided INS with an emergency supplemental appropriation of $80 million (**P.L. 106-31**). At the end of FY1999, INS had a detention capacity of 16,563 beds; nearly 95% of this capacity was utilized to detain mandatory detainees (aggravated felons, other criminals subject to mandatory detention, terrorists, expedited removals, and aliens who had been issued a final order of removal by an Immigration Judge).

## Other Pending Issues

**Commonwealth of the Northern Mariana Islands (CNMI).** The CNMI is a U.S. territory in the Pacific. The 1976 law by which Congress approved the establishment of the CNMI (P.L. 94-241) stated that certain laws, including federal immigration laws, would not apply to the CNMI, except as later made applicable by Congress. For a number of years, Members of Congress and Administration officials have expressed concern about the number of nonresident alien workers in the CNMI and allegations of their mistreatment. Legislation to address these concerns was introduced in past Congresses, but was not enacted. Last year, Senator Frank Murkowski introduced **S. 1052** to extend the INA, as amended, to the CNMI. The Senate passed S. 1052 on February 7, 2000.

**Visa Waiver Pilot Program (VWPP).** The VWPP allows citizens of certain countries to enter the United States for short visits for business or tourism without first obtaining a visa at a U.S. consulate abroad. Participating countries also extend reciprocal privileges to U.S. citizens. The statutory authorization for this program (INA § 217(f)) expired on April 30, 2000. In the interim, the Attorney General has exercised her parole authority to temporarily extend the program until May 30, 2000. The VWPP facilitates international travel and reduces consular workload abroad. It is strongly supported by the travel and tourism industry, which points to the benefits of increased economic growth generated by foreign business and tourism. On the other hand, the VWPP may contribute to illegal immigration by easing the visa and inspections process.

On April 11, 2000, the House passed the "Visa Waiver Permanent Program Act" (**H.R. 3767**). H.R. 3767 would permanently authorize the Visa Waiver Program (VWP), and includes provisions designed to improve program "performance and management." These provisions would: (1) strengthen the requirement that participating countries issue machine-readable passports; (2) prohibit the Attorney General from paroling inadmissible aliens who apply for admission under the VWP; (3) require ongoing evaluations of participating countries (at least every 5 years); (4) allow for emergency termination of visa waiver status under certain conditions; and (5) require that entry/exit control data be collected under the VWP at air and sea ports of entry. On April 13, the Senate Judiciary Committee reported a similar proposal (**S. 2367**). It does not include provisions related to the Attorney General's parole authority or entry/exit control data. (See CRS Report RS20546, *Immigration: Proposals to Reauthorize and Make Permanent the Visa Waiver Pilot Program*.)

**Human Trafficking.** Multiple bills have been introduced to combat human trafficking, particularly sexual trafficking in women and children. One of these bills, the "Trafficking Victims Protection Act of 1999" (**H.R. 3244**), was passed by the House on May 9, 2000. H.R. 3244 seeks to combat trafficking through prevention; prosecution and enforcement against traffickers; and protection and assistance to victims. Among its provisions, the bill would amend the INA to establish a new nonimmigrant visa category for trafficking victims. A Senate anti-trafficking bill (**S. 1842**) was the subject of a February 22, 2000 hearing by the Senate Foreign Relation Committee's Near Eastern and South Asian Affairs Subcommittee. (See CRS Report RL30545, *Trafficking in Women and Children: The U.S. and International Response.)*

**Elian Gonzalez.** When Elian Gonzalez, a 6-year old Cuban boy, was brought ashore last Thanksgiving, U.S. immigration authorities temporarily paroled him into the care of relatives in Florida, pending determination of his legal fate. Almost 5 months later, the protracted legal controversy and national debate over Elian continue. On April 22, 2000, federal agents forcibly removed Elian from his relatives' house and subsequently entrusted him into the care of his father near Washington, D.C. These actions were grounded in the Attorney General's discretionary power to parole undocumented aliens into the United States temporarily in lieu of detention. Although the Government had obtained a search warrant from a federal magistrate and an administrative arrest warrant prior to the April 22 action, many observers still questioned the methods used.

Meanwhile, on April 19, a three-judge panel of the U.S. Court of Appeals for the 11th Circuit enjoined Elian's removal from the United States until the court could consider his political asylum case more fully. Further arguments in the case are scheduled for May 11. Prior to the injunction, a U.S. district court had upheld the Attorney General's broad assertion of authority over Elian and had exposed him to the possibility of prompt removal to Cuba. But despite Elian's transfer to his father, the 11th Circuit's injunction remains in place, and the Justice Department has issued a departure control order barring Elian's removal. At the same time, Elian's Florida relatives have been denied visitation rights, while Elian's father has been granted permission to be heard in further court proceedings.

At least two private relief bills (**H.R. 3531/S. 1999**) would grant Elian U.S. citizenship, while another (**H.R. 3532**) would grant him legal permanent residence. A fourth bill (**S. 2314**) would grant legal status to Elian and certain close relatives, including his father. Meanwhile, **H.Con.Res. 240**/**S.Con.Res. 79** would express the sense of Congress that Elian should be reunited with his father. (See CRS Report RS20446, *Elian Gonzalez: Chronology and Issues,* and CRS Report RS20450, *The Case of Elian Gonzalez: Legal Basics*.)

**Central American and Haitian Adjustment.** The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as part of the District of Columbia appropriations act for FY1998 (P.L. 105-100), enables Nicaraguans and Cubans who had come to the United States by December 1, 1995, to become legal permanent residents. NACARA also allows Salvadorans and Guatemalans, as well as certain aliens from the former Soviet Union or specified former Warsaw Pact countries, to seek legal permanent residency under the more generous standards of hardship relief in place prior to the tightening of immigration laws in 1996. Subsequently, Congress also added the Haitian Refugee Immigration Fairness Act of 1998, which allows certain specified Haitians to adjust to permanent residence status, to the FY1999 Omnibus appropriations act (P.L. 105-277).

Citing a desire to apply the same immigration policy standards to all Central Americans, a bipartisan group of Members has introduced **H.R. 2722** on behalf of the Administration. A comparable bill (**S. 1592**) is pending in the Senate. Representative Jackson-Lee's H-1B bill, H.R. 4200, also includes similar provisions. These bills would amend NACARA to grant legal permanent residence to certain Guatemalans, Haitians, Hondurans, and Salvadorans, as has been done for the Cubans and Nicaraguans. Opponents characterize these measures as overly broad amnesty bills for illegal aliens. (See CRS Report 98-270, *Immigration: Haitian Relief Issues and Legislation,* and CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*.)

**Naturalization.** In order for immigrants to become U.S. citizens, they must: continuously reside in the United States for 5 years (3 years in the case of spouses of U.S. citizens), show that they have good moral character, pass an examination in U.S. government and history, and demonstrate the ability to read, write, speak, and understand English. Certain requirements are waived for those who are older and meet specified residence requirements; have mental or physical disabilities; or served in the U.S. military. On May 2, 2000, the House passed **H.R. 371** to exempt Hmong refugees who served in special guerilla units in Laos from the English language requirement and give them special consideration on the civics test. **S. 890** is a related Senate bill. Another Senate bill (**S. 2025**) would also ease the naturalization requirements for Hmong refugees, but it differs from H.R. 371 and S. 890 in terms of documentary requirements and the English language requirement.

Naturalization has become an issue in recent years because of instances of fraud, abuse, and mismanagement. Unprecedented numbers of people are seeking to naturalize, straining the system as INS attempts to reform it. The 105th Congress designated additional funding to restore integrity to, and improve, naturalization services in the FY1998 and FY1999 CJS appropriations acts. For FY2000, the conference agreement on a CJS appropriations bill, H.R. 2670, continued at full funding ($124 million) the FY1999 backlog reduction action teams and accompanying resources for naturalization. H.R. 2670 ultimately became part of Division B of P.L. 106-113. (See CRS Report RS20274, *Naturalization of Immigrants: Trends and Legislative Issues*.)

**Adjustment to Permanent Resident Status under Section 245(i).** Section 245 of the INA permits an alien who is legally but temporarily in the United States to adjust to permanent resident status if the alien becomes eligible on the basis of family relationship or job skills, without having to go abroad to obtain an immigrant visa. Section 245 was limited to aliens who were here legally until 1994, when Congress enacted a 3-year trial provision — Section 245(i) — allowing aliens here illegally to adjust status once they became eligible for permanent residence, provided they paid a large fee. This provision was effectively repealed by the FY1998 CJS appropriations act, P.L. 105-119, which provided that only those aliens who were beneficiaries of an immigration petition or a labor certification application filed on or before January 14, 1998, would be eligible for adjustment under Section 245(i). A bill to restore Section 245(i) to its pre-1997 status (**H.R. 1841**) is pending, and a similar provision is included in H.R. 2680. (See CRS Report 97-946, *Immigration: Adjustment to Permanent Residence Status under Section 245(i)*.)

**"Late Amnesty" and Registry.** The "Legal Amnesty Restoration Act of 1999" (**H.R. 2125**), introduced by Representative Jackson-Lee, would amend the INA to repeal the judicial review limitation on denial of adjustment to permanent resident status with respect to certain

applicants for legalization under the 1986 Immigration Reform and Control Act (IRCA). **S. 1552**, introduced by Senator Harry Reid, would likewise repeal the judicial review limitation on denial of adjustment of status with respect to certain IRCA legalization applicants, while also extending the admission registry date for permanent residence from January 1, 1972, to January 1, 1984 (with a further extension in cases involving an unlawful act by an INS employee or officer). **H.R. 3149**, introduced by Representative Jackson-Lee, is similar to S. 1552, except that it moves the registry date to January 1, 1982. Other bills sponsored by Representative Jackson-Lee would move the registry date to January 1, 1986. They include **H.R. 4172**, introduced on behalf of the Administration, and H.R. 4200.

**Religious Workers.** An immigration provision that allows for the admission of immigrants to perform religious work (INA § 101(a)(27)(C)) is scheduled to sunset on September 30, 2000. Although the provision has a broad base of support, some have expressed concern that it is vulnerable to fraud. On April 13, 2000, the Senate Judiciary Committee held hearings on a bill introduced by Immigration Subcommittee Chairman Abraham (**S. 2406**) to make the religious worker provision permanent. In the House, **H.R. 1871** would make the provision permanent, and **H.R. 4068** would extend the current admissions policy through FY2003.

**Noncitizen Victims of Family Violence.** During the past decade, Congress has enacted various provisions to assist noncitizen victims of family violence who are the spouses or children of U.S. citizens or legal permanent residents. Multiple bills to extend additional protections to battered aliens are pending before Congress. They include **S. 51**, **S. 245**, **S. 1069**, **H.R. 357**, and **H.R. 3083**. Several of these bills would allow qualified battered aliens to adjust to permanent resident status in the United States, and would establish special rules for them with respect to cancellation of removal and suspension of deportation. In the 105th Congress, the Senate approved a floor amendment to its FY1999 CJS appropriations bill (S. 2260) that contained these provisions, but the amendment was not enacted into law.

**Other Legislation Receiving Action.** The "Adopted Orphans Citizenship Act" (**S. 1485**) was passed by the Senate on October 26, 1999. It would confer U.S. citizenship on certain foreign-born children adopted by U.S. citizens. **H.R. 2883**, the companion bill, was the subject of a House Immigration Subcommittee hearing on February 17, 2000. Two other immigration bills were approved by the House Judiciary Committee on October 5, 1999. **H.R. 1520** would give priority in family first preference visa issuance to children of U.S. citizens who "aged out" of eligibility for immediate relative visas. **H.R. 2961** would allow for an extension of stay of nonimmigrant aliens entering under the Visa Waiver Pilot Program who require medical treatment.

# Legislation Enacted by the 106th Congress

## Refugees

The annual number of refugee admissions and the allocation of these numbers among refugee groups are determined at the start of each fiscal year by the President after consultation with Congress. On September 30, 1999, President Clinton signed Presidential

Determination No. 99-45, authorizing a FY2000 ceiling of 90,000 admissions, including 10,000 as needed for the Kosovo crisis, to be funded by P.L. 106-31.

**P.L. 106-104** reauthorized the Department of Health and Human Service's Office of Refugee Resettlement (HHS/ORR) program through FY2002. The HHS/ORR program is intended to provide temporarily dependent refugees and Cuban/Haitian entrants initial transitional assistance. P.L. 106-113, the Consolidated Appropriations Act, appropriated $426.5 million for HHS/ORR for FY2000, which is consistent with recent budget levels. The appropriation also includes funds to implement P.L. 105-320, the Torture Victims Relief Act of 1998, which authorizes $7.5 million for HHS grants to domestic treatment programs for torture victims.

P.L. 106-113 also extended the so-called Lautenberg amendment for an additional year, and reenacted a version of the McCain amendment for 2 years. The Lautenberg amendment is a provision of P.L. 101-167, the FY1990 Foreign Operations Appropriations Act, that requires the Attorney General to designate categories of former Soviet and Indochinese nationals for whom less evidence is needed to prove refugee status; and provides for adjustment to permanent resident status for certain Soviet and Indochinese nationals granted parole after being denied refugee status. The revised version of an expired provision previously referred to as the McCain amendment, quoting from the conference report, "restores eligibility for U.S. refugee resettlement to certain sons and daughters of Vietnamese re-education camp survivors, and also provides such eligibility for sons and daughters who were denied the right the resettle in the United States [solely] because their government-issued residency documents did not prove 'continuous coresidency' with their parents."

## Temporary Workers

**Nurses. P.L. 106-95**, the Nursing Relief for Disadvantaged Areas Act of 1999, includes provisions intended as a short-term solution for nursing shortages in a limited number of medically underserved areas. The act establishes a new H-1C category for 500 nonimmigrant nurses annually for 4 years in health professional shortage areas. It sets forth admissions requirements, including a maximum 3-year stay. Petitioning hospitals would have to be in shortage areas defined by HHS, have at least 190 acute care beds, and have specified percentages of Medicare and Medicaid patients. A previous H-1A category for nurses, which has expired, was subject to fewer restrictions. (See CRS Report RS20164, *Immigration: Temporary Admission of Nurses for Health Shortage Areas (P.L. 106-95)*.)

**H-2A Temporary Agricultural Workers. P.L. 106-78**, the FY2000 Agriculture appropriations act, § 748, amends the INA to reduce from 60 to 45 days the minimum period prior to need that employers must file H-2A labor certifications; and to increase from 20 to 30 days the minimum days in advance of need that the Secretary of Labor must act on H-2A certification requests. DOL had already amended its regulations, effective July 29, 1999, to reduce from 60 to 45 days the period of time prior to need that employers must file labor certifications. In combination, the two changes would shorten the domestic recruitment period to 15 days, a move not favored by DOL.

## Other Immigration-related Legislation

**Use of Social Security Numbers on State-Issued Driver's Licenses. P.L. 106-69**, the FY2000 Department of Transportation appropriations act, § 355, repeals § 656(b) of IIRIRA. Section 656(b) of IIRIRA prohibited federal agencies from accepting state-issued driver's licenses or comparable documents for identification purposes after October 1, 2000, that did not contain a social security number (unless the state qualified for an exemption) and meet other standards. The repeal of § 656(b) reflects the fear that it could have become the basis for a "national ID card." Those opposed to repeal argued that § 656(b) was necessary to bolster the integrity of the employment eligibility verification process.

**Sibling Adoption. P.L. 106-139** amends the INA to increase the age limit from 16 to 18 for adopted alien children who are siblings of children adopted under age 16.

**National Interest Waiver for Alien Physicians.** P.L. 106-95 and P.L. 106-113 include identical amendments to the INA requiring the Attorney General to issue a "national interest waiver" of the job offer requirement for alien physicians seeking permanent admission as employment-based second preference immigrants. The alien physicians must agree to work in a medically underserved area designated by the HHS Secretary or in a Veterans Affairs facility, and do so for 5 years, and a federal agency or state public health department must previously have determined that their work in the area or facility is in the public interest.

**Miscellaneous Nonimmigrant Amendments.** P.L. 106-95 amends the "L" nonimmigrant category for intracompany transfers (i.e., employees of international corporations) to provide that international management consulting firms that break off from other international accounting firms may continue to use L visas for foreign nationals who work for them, provided they maintain the qualifying worldwide organizational structure. P.L. 106-104 amends the INA to extend for an additional 2 years the "S" nonimmigrant category for alien witnesses and informants providing information on organized crime and terrorist operations.

**Other Provisions in the Consolidated Appropriations Act.** P.L. 106-113 authorizes the Secretary of State to charge fees relating to affidavits of support, and states the Department's policy regarding processing of immigrant relative visa applications within 30 to 60 days of receipt. It also includes a provision prohibiting the use of funds appropriated by it for providing visas to citizens or nationals of countries determined by the Attorney General under INA § 243(d) to deny or unreasonably delay accepting the return of its citizens or nationals (*Cong. Rec.*, 11/17/97, Pt. II, pp. H12549-12551).

## LEGISLATION

**P.L. 106-31 (H.R. 1141)**

1999 Emergency Supplemental Appropriations Act. Includes funding for Kosovar refugees, including $100 million for HHS/ORR to remain available through September 30, 2001; includes $80 million for INS. House agreed to conference report (H.Rept. 106-143) on May 18, 1999; Senate agreed on May 20, 1999. Signed May 21, 1999. (*See* Refugees.)

**P.L. 106-69 (H.R. 2084)**

Department of Transportation and Related Agencies Appropriations Act, FY2000. Repeals § 656(b) of IIRIRA, relating to Social Security numbers on drivers' licenses. House agreed to conference report (H.Rept. 106-355) on October 1, 1999; Senate agreed on October 4, 1999. Signed October 9, 1999.

**P.L. 106-78 (H.R. 1906)**

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, FY2000. Amends INA to expedite the Labor Department's processing of H-2A labor certification applications. House agreed to conference report (H.Rept. 106-354) on October 1, 1999; Senate agreed on October 13, 1999. Signed October 22, 1999. (Provision originated in **S. 1233**; *see* Temporary Workers.)

**P.L. 106-95 (H.R. 441)**

Nursing Relief for Disadvantaged Areas Act of 1999. Reported by House Judiciary Committee (H.Rept. 106-135) on May 12, 1999. Passed House on May 24, 1999. Passed Senate with amendments relating to national interest waiver for alien physicians, and "L" nonimmigrants on October 22, 1999; House agreed to Senate amendments on November 2, 1999. Signed November 12, 1999. (*See* Temporary Workers.)

**P.L. 106-104 (H.R. 3061)**

Amends the INA to extend for an additional 2 years the "S" nonimmigrant category for alien witnesses and informants, and to authorize appropriations for the HHS refugee resettlement assistance program for FY2000-2002. Passed House on October 26, 1999; passed Senate on November 8, 1999. Signed November 13, 1999.

**P.L. 106-113 (H.R. 3194)**

Consolidated Appropriations Act, FY2000. House agreed to conference report (H.Rept. 106-479) on November 18, 1999; Senate agreed on November 19, 1999. Signed November 29, 1999. Includes provisions from H.R. 2415, State Department Authorization bill; H.R. 2670/S. 1217, Commerce, Justice, State, and Judiciary Appropriations Act, FY2000; and H.R. 3037/S. 1650, Labor, HHS, and Education Appropriations Act, FY2000.

**P.L. 106-139 (H.R. 2886)**

Amends INA to increase the age limit from 16 to 18 for adopted alien children who are siblings of children who were adopted under age 16. Reported by House Judiciary Committee (H.Rept. 106-383) on October 14, 1999. Passed House on October 18, 1999; passed Senate on November 19, 1999. Signed December 7, 1999.

**H.R. 371 (Vento)**

Hmong Veterans' Naturalization Act of 1999. Reported by Judiciary Committee (H.Rept. 106-563) on April 6, 2000. Passed House, as amended, on May 2, 2000.

**H.R. 1788 (Franks)**

Nazi Benefits Termination Act of 1999. Reported by Judiciary Committee (H.Rept. 106-321, Pt. I) on September 14, 1999, and by Government Reform Committee (H.Rept. 106-321, Pt. II) on October 6, 1999. (*See* Alien Eligibility for Public Assistance.)

**H.R. 3244 (C. Smith)**

Trafficking Victims Protection Act of 1999. Reported by International Relations Committee (H.Rept. 106-487, Pt. I) on November 22, 1999, and by Judiciary Committee (H.Rept. 106-487, Pt. II) on April 13, 2000. Passed House, as amended, on May 9, 2000.

**H.R. 3767 (L. Smith)**

Visa Waiver Permanent Program Act. Reported by Judiciary Committee (H.Rept. 106-564) on April 6, 2000. Passed House, as amended, on April 11, 2000.

**H.R. 3918 (Rogers)**

Immigration Reorganization and Improvement Act of 1999. Introduced March 14, 2000; favorably reported by Subcommittee on Immigration and Claims to Judiciary Committee on March 22, 2000. (*See* INS Reorganization and Budget.)

**H.R. 4227 (L. Smith)**

Technology Worker Temporary Relief Act. Introduced April 11, 2000; favorably reported by Subcommittee on Immigration and Claims to Judiciary Committee on April 12, 2000. (*See* H-1B Temporary Professional Workers.)

**S. 1052 (Murkowski)**

Northern Mariana Islands Covenant Implementation Act. Reported by Energy and Natural Resources Committee (S.Rept. 106-204) on November 1, 1999. Passed Senate, as amended, on February 7, 2000.

**S. 1485 (Nickles)**

Adopted Orphans Citizenship Act. Reported by Judiciary Committee (without written report) on October 21, 1999. Passed Senate on October 26, 1999.

**S. 1754 (Hatch)**

Denying Safe Havens to International and War Criminals Act of 1999. Reported by Judiciary Committee (without written report) on October 25, 1999. Passed Senate, as amended, on November 4, 1999. (*See* Criminal Aliens.)

**S. 2045 (Hatch)**

American Competitiveness in the Twenty-first Century Act of 2000. Reported by Judiciary Committee (S.Rept. 106-260) on April 11, 2000. (*See* H-1B Temporary Professional Workers.)

**S. 2367 (Abraham)**

Travel, Tourism, and Jobs Preservation Act. Reported by Judiciary Committee (without written report) on April 13, 2000.